



FH

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MKB/168879

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 21, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau ["DDB"] in regard to Medical Assistance ["MA"] disability, a Hearing was held via telephone on October 13, 2015.

The issue for determination is whether petitioner is disabled for purpose of the MA Katie Beckett Program ["KBP"].

There appeared at that time and via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] (not present at October  
13, 2015 Hearing)

c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED], petitioner's father

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: No Appearance

Disability Determination Bureau  
722 Williamson St.  
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (14 years old) is a resident of Brown County, Wisconsin.
2. On May 5, 2015 petitioner filed an *Application For Katie Beckett Program Wisconsin Medicaid*; by a letter dated July 30, 2015 entitled *Medicaid -- Disability Decision Notice -- Katie Beckett Program* DDB found that petitioner was not eligible for KBP because his condition is not disabling.
3. On August 21, 2015 petitioner filed a *Medical Assistance -- Reconsideration Request -- Child* with DDB but DDB again determined that petitioner's condition is not disabling.
4. Petitioner has diagnoses of Mood Disorder, Reactive attachment disorder, and Attention Deficit/Hyperactivity Disorder ["ADHD"], he takes medication for these and attends weekly therapy sessions; he has had suicidal ideation, hidden knives, and had a plan to hang himself; he has no physical health concerns; he was adopted from Romania at the age of 13 months and no mental health issues were known at that time; he spent some time in foster care while still in Romania.
5. Petitioner describes his relationships with his 2 younger male siblings as very close; petitioner is close with his mother and states "she means so much and the one he cares for most"; petitioner confides with his father but is not emotional with him; petitioner states that his living situation with his family meets his needs; his relationship with his friends outside of school is good, but he has pulled away from friends in school (his mother states he makes friends easily but is not able to sustain long-term relationships); he states that he has 3 main friends; he states that his primary sources of support are his mother, father, and brothers (his mother has stated that his family bond is not normal and that he lies, is manipulative, angry, and passive aggressive).
6. Petitioner is in the 8<sup>th</sup> grade and gets "decent grades" (he has been an A/B student but is now getting C's and D's); he has been assessed with a full-scale IQ of 112; he states that some children at school make fun of him and he feels bullied at times; on April 23, 2015 he transferred from a private school to a public school.
7. Petitioner had significant mood swings and mental health concerns for the first several years of his life but these settled down by about 6 years of age; he did very well for quite a few years until a downhill slide that began in the fall of 2014 which included an increase in lying, decline in school work, isolating himself from classmates, increase in sleeping, scattered thought process, depression, and running away from home; at the beginning of 2015 he began cutting himself (although not to the degree that he required medical attention), having suicidal thoughts/visions, and writing disturbing things in his journal; in March 2015 he was having a lot of suicidal thoughts, was doing more cutting, and seemed severely depressed; on March 31, 2015 petitioner took a knife to school, ran away from school, and went to a park indicating he planned to commit suicide because he got a bad grade on a test and was made fun of; when he got out in the fresh air he thought about how committing suicide would hurt his family and himself and reconsidered; he was admitted to a psychiatric center and stayed from March 31, 2015 to April 6, 2015; he stated that "suicide thoughts come and go since he was young."; he was discharged and showed some improvement but there was a rapid downhill slide; on April 15, 2015 his school called and stated that he had been cutting (he used a writing pen which he had broken); he was readmitted to the psychiatric center

because he was having intermittent thoughts of hanging himself (he had given his belt to a teacher because he had such thoughts) and stated that his head was “racing”; he started on new medications before he was discharged on April 21, 2015; after discharge he did well; he was back in school, reported he felt clam, was happier and enjoying life more; his suicidal thoughts were completely gone; there was no further history of cutting, he was brighter and more animated, interacting with his family and much more open; his lying and manipulative behaviors stopped.

8. Petitioner’s recent medical report following a doctor visit on August 15, 2015 states that petitioner denies suicidal ideation and that he is reliable in this denial; it states that he “continues to maintain fairly well” “is currently doing better” and that his mother was encouraged to continue with the current plan of holding off on day treatment (though keeping his name on the wait list); it also states that “there is still a persistent level of anxiety that isn’t being addressed” and that “he remains at increased risk for future self harm.”

### **DISCUSSION**

A child is determined to be disabled by standards outlined in the Social Security Act. 42 U.S.C. § 1396a(e)(3)(A), See also, 42 U.S.C. § 1382c(a)(3)(C), 42 C.F.R. § 435.225, Wis. Stat. § 49.46(1)(d)4. (2013-14). The applicable Social Security Act disability standards are found in the Code of Federal Regulations [“CFR”], Title 20, Part 416, Subpart I (§§ 416.901 et. seq.), and, by reference, Appendices 1 and 2, Subpart P, Part 404.

Under the Social Security Act, for a child to be *disabled* the child must have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations. 20 C.F.R. § 416.906. Unless the impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is called the *duration requirement*. Id. & 20 C.F.R. § 416.909. If a child files a new application and the child is engaged in Substantial Gainful Activity, the child will not be considered *disabled* even if the child otherwise meets the definition of *disabled*. 20 C.F.R. § 416.906. A *Substantial Gainful Activity* [“SGA”] means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. 20 C.F.R. §§ 416.910 & 416.972.

DDB determined that petitioner is not disabled because it found that although petitioner has one or more severe physical or mental impairments his condition does not cause marked and severe functional limitations. The phrase *marked and severe functional limitations* is a level of severity that meets, or medically or functionally equals, the severity of a listing in the Listing of Impairments found in Appendix 1 of Subpart P of Part 404 of Title 20 of the C.F.R. See, 20 C.F.R. § 416.902. This *Listing of Impairments* is known simply as *the Listing*. A child’s impairment may be a *severe impairment* and yet not meet, or medically or functionally equal, the severity of a listing in the Listing. This is because not all *severe impairments* cause *marked and severe functional limitations*. See, 20 C.F.R. §§ 416.902 & 416.924(c) & (d).

A child has *marked and severe functional limitations* in any one of the following 3 circumstances: (1) the child's severe impairment meets the severity of a listing found in the Listing; (2) the child's severe impairment medically equals the severity of a listing found in the Listing; or, (3) the child's severe impairment functionally equals the severity of a listing found in the Listing. *Id.*; See also, 20 C.F.R. §§ 416.926 & 416.926a. Therefore, if a child's severe impairment meets at least 1 of these 3 tests and also meets the duration requirement, he or she will be found to be *disabled*. 20 C.F.R. § 416.924(d)(1). On the other hand, if a child's severe impairment does not meet any of these 3 tests, or does not meet the duration requirement, he or she will be found to be *not disabled*. 20 C.F.R. § 416.924(d)(2).

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (February 2013). It is noted that petitioner's recent medical report following a doctor visit on August 15, 2015 states that petitioner denies suicidal ideation and that he is reliable in this denial, that he "continues to maintain fairly well", "is currently doing better", and that his mother was encouraged to continue with the current plan of holding off on day treatment (though keeping his name on the wait list). However, it also states that "there is still a persistent level of anxiety that isn't being addressed" and that "he remains at increased risk for future self harm." Thus, the evidence in the record of this matter is that, although there is some risk of relapse, petitioner is currently much better.

First, it cannot conclude that petitioner's impairment currently equals the severity of a listing found in the Listing. The Listings that are most relevant to petitioner are found in 112.00: "Mental Disorders"; and, "Attention Deficit Hyperactivity Disorder". However, petitioner does not exhibit all the necessary symptoms to the necessary degree to meet those Listings. His impairments do not rise to the required level. See, 112.04 (*Mood Disorders*) & 112.11 (*Attention Deficit Hyperactivity Disorder*).

Second, based on the evidence, petitioner's impairments do not currently medically equal the severity of a listing found in the Listing. Petitioner's impairments are not at least equal in severity and duration to the listed findings found in the Listing. See, 20 C.F.R. § 416.926.

Third, as noted above, a child has *marked and severe functional limitations* if the child's severe impairment functionally equals the severity of a listing found in the Listing. In order for a severe impairment to functionally equal the severity of a listing found in the Listing it must be *of listing level severity*. A severe impairment is *of listing-level severity* if there are *marked*<sup>1</sup> limitations in any 2 of the following 6 *domains* (or an *extreme*<sup>2</sup> limitation in any 1 of the domains): (i) acquiring and using information; (ii) attending and

---

<sup>1</sup> A *marked* limitation will be found when the child's impairment interferes seriously with the child's ability to independently initiate, sustain, or complete activities. The child's day-to-day functioning may be seriously limited when the child's impairments limit only 1 activity or when the interactive and cumulative effects of the impairment limit several activities. *Marked* limitation also means a limitation that is *more than moderate* but *less than extreme*. It is the equivalent of the functioning one would expect to find on standardized testing with scores that are at least 2, but less than 3, standard deviations below the mean. 20 C.F.R. § 416.926a(e)(2)(i).

<sup>2</sup> An *extreme* limitation will be found when the child's impairment interferes very seriously with the child's ability to independently initiate, sustain, or complete activities. The child's day-to-day functioning may be very seriously limited when the child's impairments limit only 1 activity or when the interactive and cumulative effects of the impairment limit several activities. *Extreme* limitation also means a limitation that is *more than marked*. It is the rating given to the worst limitations. However, it does not necessarily mean a total lack or loss of ability to function. It

completing tasks; (iii) interacting and relating with others; (iv) moving about and manipulating objects; (v) caring for oneself; and, (vi) health and physical well-being. 20 C.F.R. §§ 416.926a(b)(1) & (d); see also, 20 C.F.R. § 416.926a(e)(2)(i) & (3)(i).

DDB found that petitioner has a marked impairment in the domain of caring for oneself. It is not clear if the same finding would be made today. Nevertheless, if it is assumed that that finding is still valid petitioner's condition will functionally equal the severity of a listing found only if he has a marked impairment in at least one other domain (or an extreme impairment in any one of the domains). Based on the evidence in the record of this matter, petitioner does not currently have a marked impairment at least one other domain. Additionally, he does not have an extreme impairment in any one of the domains.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner is not disabled for purpose of KBP.

**NOW, THEREFORE**, it is

### **ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

---

is the equivalent of the functioning one would expect to find on standardized testing with scores that are at least 3 standard deviations below the mean. 20 C.F.R. § 416.926a(e)(3)(i).

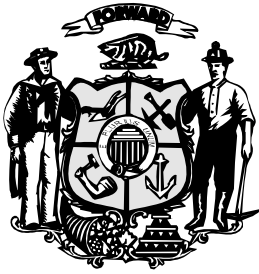
Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of October, 2015

---

\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 26, 2015.

Brown County Human Services  
Bureau of Long-Term Support  
Division of Health Care Access and Accountability